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# THE EVOLUTION OF LD POLICY AND FUTURE CHALLENGES

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## HISTORICAL CONTEXT

It is 42 years since Sam Kirk proposed the use of the term learning disabilities (LD) and I began my career in education. As a new seventh-grade history and English teacher, I was frustrated by my inability to teach, effectively, students who were unable to adequately read the textbooks and achieve academically at a level consistent with their intellectual abilities. Thus, I embarked on a career in special education.

In 1967, I came to the Council for Exceptional Children (CEC) to work on national and state policy to advance the education of students with exceptionalities. The following year CEC and the Association for Children with Learning Disabilities, working with Senator Ralph Yarborough of Texas, developed and had introduced, along with Congressman Carl Perkins of Kentucky, the Children with Specific Learning Disabilities Act. The bill provided for research, professional development, and model programs in learning disabilities. The following year the bill was enacted as Title VII of the Education of the Handicapped Act (PL 91-230).

The CEC State-Federal Information Clearinghouse for Exceptional Children, which I directed, reported in 1970 that 18 states had policies directed at the needs of students with LD (CEC-SFICEC, 1970). The terms used to describe such students and the definitions of the terms varied widely. We found that children who possessed reading or other major learning problems were classified with 38 different terms (Weintraub, Abeson & Braddock, 1971). At the same time, the National Center for Educational Statistics (1970) found that while all schools reported having one or more students with LD, 34% of schools provided no special education services to these students.

The following five years were focused, in the courts,

state legislatures, and the U.S. Congress, on establishing policies that would ensure that all students with disabilities, including those with LD, would have available to them a public education and the special education services they required to benefit from an education.

A milestone in this effort was the historic right-to-education case, *The Pennsylvania Association for Retarded Children v. the Commonwealth of Pennsylvania (PARC)*. In determining whether there was a constitutional equal protection right to an education, the court had to decide that children with mental retardation, who had been excluded from public education, could benefit from an education. The state argued that since the children could not be expected to meet the standards expected of all students in the schools, they could not benefit from an education. The court found that "all mentally retarded persons are capable of benefiting from a program of education and training; that the greatest number of retarded persons, given such training, are capable of achieving self-sufficiency, and the remaining few, with such education and training, are capable of achieving some degree of self-care ..." (334 F. Supp. 1257). Thus, the court embraced a view of equal educational opportunity that recognized equal access to differing resources for differing outcomes (Weintraub & Abeson, 1974). The right-to-education principle articulated in *PARC* was premised on the view that students were different in both how they learned and what they needed to learn, in contrast to the traditional view that the purpose of education is to provide students access to the same outcomes.

The right-to-education movement culminated with the passage of Public Law 94-142, The Education for All Handicapped Children Act, now known as the Individuals with Disabilities Act (IDEA), which guaranteed students with disabilities a free appropriate public

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education (FAPE). Following the principles established in *PARC*, the law was procedural, rather than substantive, allowing a team of people to determine what was appropriate for a student. It was hoped that the education system would embrace the notion of celebrating outstanding achievement and that the student who, using all of his ability, became a janitor would be as valued as the student who went to Harvard.

Whether to require school districts to serve students with LD was a major issue of contention during the process of enacting the law. Opponents argued that the term LD was too amorphous, thus potentially requiring special education services to millions of students with learning problems. As a result, on the floor of the House of Representatives an amendment was agreed to, limiting the number of children with specific LD who could be counted for funding. This cap could be and was lifted when the then Office of Education adopted regulations for identification of students with specific LD, including the severe discrepancy requirement, that supposedly would limit the population to the congressionally intended 1-3% of the total school age population.

### PROGRESS AND CHALLENGES

Three decades later it is helpful to examine the status of the education of students with LD from a policy perspective in the context of the historical antecedents.

***Are students identified with LD receiving the FAPE to which they are entitled?*** Since 5.75% of all students in the United States are classified as having LD and receiving special education services, it is reasonable to assume that the goal of providing FAPE to all students with LD has been achieved.

***Are there more students classified as having LD than warranted?*** The percentage of students currently classified exceeds by twofold the percentage anticipated by the framers of PL 94-142. One possible explanation is that the congressional expectation that students with LD would constitute 1-3% of the school population was too low. Incidence rates reported to the Congress, at that time, ranged from 1-7% (Kakalik, 1973). The incidence rate of 5.7% falls within that range. Another possible explanation is that students who do not have learning disabilities are being classified as such. For example, the state of Georgia has an incidence rate of 3.20%, while its neighbor South Carolina has a rate of 6.12%. Similarly, Rhode Island has a rate of 9.60%, as compared to Vermont's 4.34% (U.S. Department of Education, 2001).

It would be difficult to ascribe etiological or even cultural differences as the basis for these discrepancies. A more logical conclusion is that a student in one state may be classified as learning disabled, but in another state that same student would be designated as having

a different disability. South Carolina and Rhode Island have significantly lower rates of students with emotional disturbance than do Georgia and Vermont, for example. Similar variations may be found when comparing state incidence rates for LD and mental retardation. Given that the overall incidence rate of students with disabilities receiving special education, 11.38%, is within the congressionally anticipated 12%, it is reasonable to suggest that the differences are a result of the criteria or practices used within the state to determine who is or is not learning disabled.

However, the recent reauthorization of IDEA is testament that the debate over who does or who does not have learning disabilities continues. Eliminating the "severe discrepancy" requirement and authorizing the use of a process to determine how a student responds to research-based interventions may provide assessment information that is more helpful for educational planning, but will probably have little impact on the numbers of students who receive special education. The question for the future is whether we need the elaborate and costly assessment gate-keeping process that determines whether a student has a particular disability and is or is not eligible for special education services.

#### ***Are students with LD being appropriately educated?***

This is a difficult question to answer, since there is no commonly agreed-upon criteria. One option is to determine if students with LD stay in school and graduate with a standard diploma. The U.S. Department of Education (2001) reported that in the 1998-1999 school year 63.3% of students with LD graduated with a standard diploma and 27.1% dropped out of school before graduating. By comparison, the graduation and dropout rates for all students were approximately 71% and 11%, respectively.

The graduation rate for students with LD has consistently improved over the years while the dropout rates have declined. Further, the graduation rate may be higher than reported since it only includes students who were receiving special education at the time of graduation and not students who graduated but exited special education prior to 12th grade. The dropout rate may also be artificially high since it includes students whose whereabouts are unknown. We also know that the number of students with LD going on to higher education has continued to increase. While these data may not meet the expectations of students, families and professionals, they are indicators that the educational outcomes for students with LD have significantly improved over the years.

There is a growing societal belief that everyone should attend some form of higher education and that it is the role of the public schools to prepare students for education beyond high school. As a result, non-college

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preparation curricula and programs, such as vocational education, are rapidly disappearing. At the same time, high school diplomas increasingly require passing more advanced courses such as algebra and a high school exit exam. While there is often an alternative curriculum and graduation criteria for students with severe cognitive disabilities, there are increasingly no alternatives for students who are not severely cognitively disabled but still do not have the cognitive ability to adequately master the general curriculum. The students who were once served in special education under the label educable or mildly mentally retarded have disappeared, as have the work study and vocational programs that prepared them for employment after graduation. It is probably fair to assume that they now constitute a portion of the LD population and may be a significant part of the students who drop out and are not graduating with a diploma. The question is whether all students with LD can reasonably be expected to master the general curriculum and graduate with a diploma. If the answer is no, we must consider alternative educational standards, curricula, and programs that will prepare those students for success after school.

Another aspect of this issue is the participation of students with LD on statewide assessments required under state laws and the No Child Left Behind Act (NCLB). Students who have the ability to master the general curriculum should be expected to take the exams, with appropriate accommodations, and schools should be held accountable for their performance. However, whether schools should be held accountable for the poor performance of students who are performing to their ability is a serious question. To do so imbeds the

traditional belief system of American education that only values the achievements of most and devalues the educational achievements of some, while undermining the underlying principles of *PARC*, *IDEA*, and special education.

Beginning with the *IDEA* amendments in 1997 through the current amendments, coupled with *NCLB*, we are moving back to the traditional standard of sameness. If we fail to address this issue, we not only allow the achievement of some students to be devalued, we also allow the question of whether society should bother educating children who cannot succeed.

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